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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Ronald S. Tillman,
Plaintiff,

v.

Donald Romine, Tom Snizek,
Louis Lopez, A.W. Alexander,
A. Whitecavage, Romeo Bone,
A. Rowe Jr., Kieth Koncur,
FNU. Hamilton, D. Eichner,
D. Greene, Edward Sobeleski,
FNU. Lutz, R. Frasch,
FNU. Kratzer, FNU. Hagenbuch,
W.L. Robey,
Defendants.

1: CV - 00 - 2041

Civil No.: _____

JURY TRIAL DEMANDED

FILED
SCRANTON

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COMPLAINT

PER [Signature]
DEPUTY CLERK

And now comes the Plaintiff Ronald S. Tillman, pro se,
and files this Complaint;

I. PARTIES

1. Plaintiff Ronald S. Tillman (Hereinafter "Plaintiff"), is confined at United States Penitentiary Lewisburg, P.O. BOX 1000, Lewisburg, Pa. 17837.

2. The above named Defendants (Hereinafter "Defendants") are individuals whom are employed as officers here at United States Penitentiary Lewisburg (Hereinafter "USP Lewisburg"). These officers are being sue in their individual capacity.

II. JURISDICTION

3. This Court maintains jurisdiction over the instant case in accordance with 28 U.S.C. § 1331 as this action is based on the laws and Constitution of the United States. Also, jurisdiction is proper to issue a writ of Mandamus pursuant to 28 U.S.C. § 1361.

III. ADMINISTRATIVE REMEDIES

4. Plaintiff has exhausted all his administrative remedies available to him. Federal Bureau of Prisons Informal resolution attempt 5/19/00. Federal Bureau of Prisons BP-9 case number 214074-F1. Federal Bureau of Prisons BP-10 case number 214074-R1. Federal Bureau of Prisons BP-11 case number 214074-A1, all was denied.

IV. FACTS

5. Plaintiff have on numerous occasions brought to the attention of the Defendants here at USP Lewisburg, the problem concerning the smoking policy. Where as officers and inmates are violating the smoking policy. And the officers that refused to enforce the smoking policy throughout this institution.

6. On or about 3/14/00, Plaintiff went and spoke with Lewis Lopez, Associate Warden of Custody. Plaintiff told [Lopez] about the problem with the smoking. Plaintiff stated to Lopez how his officers and inmates were smoking in non-smoking areas. That his officers are not enforcing the non-smoking policy at

USP Lewisburg. Plaintiff told Lopez that the smoke was making him [Plaintiff] sick. That it was burning Plaintiff's nose and throat. Lopez said that he would take care of it.

7. On or about 3/21/00, Plaintiff went to Tom Sniezed, Associate Warden of Programs. Plaintiff told Sniezek that Plaintiff had went to Lopez and spoke with him about the smoking problem throughout this institution. Plaintiff stated to Sniezek that Plaintiff has not seen any improvement in the officers enforcing the smoking policy, after Plaintiff talked with Lopez. Plaintiff asked Sniezek could he instruct his officers to comply with the smoking policy at USP Lewisburg. Because the smoke is making Plaintiff sick, burning his nose and throat. Sniezek said he would look into it.

8. On or about 3/21/00, Plaintiff went and spoke with A.W. Alexander, Unit (3) Manager, about the smoking problem in Unit (3) E-1 and the non-smoking TV rooms. Plaintiff stated to Alexander that [A. Whitecavage] was moving inmates that smoke on the non-smoking floor. And that inmates and officers were smoking all over Unit (3) E-Block in no smoking areas. Plaintiff told Alexander how the smoke was making Plaintiff sick. Alexander asked Plaintiff what was going on in the block. Plaintiff stated that officers and inmates were smoking in non-smoking areas. How they [Alexander] had inmates living on the non-smoking floor that smoke. Plaintiff asked Alexander to move those inmates off the non-smoking floor. Alexander said that he would take care of the problem.

9. On or about 3/22/00, Plaintiff went and spoke with his

Counselor, A. Whitecavage, about the inmates that were being placed on Unit (3) E-1 non-smoking floor that smoke. Whitecavage said that he was not moving smoker on Unit (3) E-1 non-smoking floor. Plaintiff asked Whitecavage to come to Unit (3) E-1 and check to see who is smoking. Or ask the inmates if they smoked or not, because the smoke was making Plaintiff sick. It was also burning Plaintiff's nose and throat. Whitecavage said that he would look into it. But on 8/15/00 Whitecavage moved two more inmates on the non-smoking floor that smoked. But as of this date 10/30/00 inmates are still smoking on the non-smoking floor.

10. On or about 4/13/00, Plaintiff went and spoke with the Warden, Donald Romine, in the kitchen on main line about the smoking problem in this institution. Plaintiff told Romine that he had already talked with Lopez and Sniezek and Alexander his Unit Manager about the smoking problem all over this institution. Plaintiff told Romine how the smoke was making Plaintiff sick. How you can't even walk down the hallway without some one smoking. Officers and inmates are smoking in the halls and TV rooms and throughout the Units. Officers are not enforcing the non-smoking policy throughout this institution. Romine told Plaintiff that he would have a talk with his officers and told Plaintiff to go back to his Unit Manager [Alexander] about those inmate that were living in Unit (3) E-1 that smoke, so that they could remove those inmate out of the non-smoking floor.

11. On 6/19/00, at 10:05 p.m. officer Edward Sobeleski came in Unit (3) E-Block to help with the count. An inmate was found

dead in his bed. Sobeleski was watching the cube so that no one would disturb the area. Sobeleski started smoking. He lit up a cigarette after cigarette. Plaintiff told Sobeleski that this is a non-smoking floor. Sobeleski kept right on smoking. While Sobeleski was smoking, every inmate that smoked on E-1 was smoking right a long with Sobeleski. And Sobeleski said nothing. By the time Sobeleski left the Block he has smoked on whole pack of cigarettes.

12. On 7/18/00, Officer Romeo Bone was working Unit (3) E-Block. While making his rounds [Bone] walked up on an inmate smoking on the non-smoking floor and Bone told the inmate that I was told to write an incident report on any inmate caught smoking in a non-smoking area(s). And this is a non-smoking area. The inmate put his cigarette out and left the floor.

13. On 9/11/00, at 11:20 a.m. Officer A. Rowe Jr., while making rounds in Unit (3) E-1, there was an inmate smoking; Rowe walked right to him saying nothing. As officer Rowe was leaving e-1, officer Rowe opened the door and there was another inmate smoking on the phone. Which is a non-smoking area. Rowe walked right by him. Then on these dates while working Unit (3) E-Block, officer Rowe did observed inmates smoking and did nothing about it: 9/8/00; 9/9/00 and 9/16/00 at 12:10 p.m.

14. On 9/6/00 at 9:25 p.m., while making his rounds on Unit (3) E-Block, Officer Wesley Robey came in the non-smoking TV room; inmates were smoking in this TV room and Robey said nothing. On 9/14/00 at 7:45 p.m., inmates were smoking in the non-smoking phone area. Robey walked right by them saying nothing. 9/14/00 at 7:50 pm, Robey was sitting in the non-smoking Tv

room watching the [Martin] show. Two inmates were smoking and Robey was sitting right behind them and said nothing. And on 9/18/00 at 9:35 p.m.; 9/21/00 at 9:25 p.m.; 9/22/00 at 4:55 p.m.; and 9/27/00 at 8:28 p.m. inmates were smoking in the non-smoking areas at all the above dates. And Robey never said anything to them. Or asked them to leave the non-smoking area(s).

15. On 9/9/00 at 9:35 p.m., Officer (FNU) Hamilton came on Unit (3) E-1 to shake down an inmate's cube. While Hamilton and another officer shook down the inmate's cube, that inmate was two cubes down smoking. Hamilton picked up the inmate's pack of cigarette and looked in them. Hamilton and the other officer got through shaking down the inmate's cube. Hamilton then told the inmate that he was sending him to the "Lieutenant's" office. The inmate asked Hamilton could he get his cigarette, the inmate got his cigarettes and went down to see the Lieutenant. When this inmate came back to the block, Hamilton let the inmate back in the block. This inmate was smoking a cigarette when he came through Hamilton said nothing to him, and the inmate walked right by Hamilton and went on E-1 which is a non-smoking floor "Smoking" his cigarette. On 9/16/00 at 8:35 p.m., Hamilton and another officer was on the first floor phone area, at the front door. They had an inmate they were to the lieutenant's office. There were ("Three") inmates smoking, two were on the phone and the another one was talking with Hamilton. At no time did Hamilton tell these inmates to put out their cigarettes or leave the non-smoking area. And

on 9/17/00 at 4:50 p.m.; 9/21/00 at 9:50 p.m.; 9/23/00 at 9:23 p.m.; and 9/24/00 at 4:36 p.m. inmates were smoking in non-smoking areas, and Hamilton said nothing.

16. on 9/19/00 at 12:00 mid night, Officer (FNU) Hagenbuch, while making his count at night on Unit (3) E-1, inmates were smoking and Hagenbuch did not say anything to them. When Hagenbuch came on the floor to count, inmates were smoking but Hagenbuch never said anything to them. When Hagenbuch opened up the block in the morning and comes, inmates were smoking and Hagenbuch don't say anything to them.

17. On 9/24/00 at 12:17, Officer (FNU) Kratzer came on the first floor looking for an inmate. There were an inmate smoking, Kratzer started talking with this inmate. Kratzer asked this inmate where did another inmate live. The inmate was still smoking and told Kratzer that he did not know this inmate. On 9/25/00 at 8:15 p.m. Kratzer, while making his rounds, inmates were smoking all over the first floor. And Kratzer walked right by them and never saying anything to them. And on 9/25/00 at 12:15 p.m. Kratzer was walking with an inmate on the non-smoking floor while this inmate was smoking a cigarette and Kratzer said nothing to him. And on 9/28/00 at 12:00 noon Kratzer was doing his block census count. Kratzer came into the non-smoking TV room, inmates were smoking. Kratzer did his census count and left never saying anything to those inmates that were smoking. And on 9/29/00 at 3:45 p.m., Kratzer walked right by an inmate that was smoking on the first floor phone area, which is a non-smoking area.

18. On 10/1/00 at 8:00 p.m., Officer D. Eichner was on the first floor in Unit (3) E-1 shaking down an inmate's cube. Right across from where Eichner was, there was an inmate smoking. Eichner could not but help but to see him because the inmate was standing up smoking. Eichner never said anything to him. Eichner got through shaking down the inmate's cube. Eichner walked out the door of the first floor. Right at the front of the door, is the phone area. There was an inmate smoking. Eichner just walked right by him saying nothing. On 10/3/00 at 9:50 p.m.

19. 10/4/00 at 4:45 and 9:55 p.m. and 10/8/00 at 7:00 p.m. Eichner was the officer working Unit (3) E-Block on the above dates, and inmates were smoking and Eichner did nothing or said anything to those inmates that was smoking.

20. On 10/5/00 at 4:05 p.m. Officer D. Greene came into Unit (3) E-Block to help with the four (4) o'clock count. When Greene came into Unit (3) E-Block he was smoking. Greene was standing in the first floor hall talking with Officer R. Frasch and again at 9:50 p.m. Greene was in the non-smoking Tv room, there were three inmates in the non-smoking Tv room smoking. Greene never said one word to them. On 10/7/00 at 6:30 p.m. Greene was smoking in the non-smoking TV room.

21. On 10/10/00, Officer (FNU) Lutz was working Unit (3) E-Block. An inmate came down to use the phone, Lutz was standing there when this inmate was smoking. Lutz never said anything to him. On 10/13/00 at 8:35 a.m. there was a shake down in Unit (3) E-1 the inmates went up to the TV room and there were inmates smoking and Lutz said nothing to them.

On 10/15/00 at 1:33 p.m., inmates were in the non-smoking Tv rooms smoking and Lutz was watching football, while these inmates were smoking.

22. On 10/19/00 at 12:17 p.m., Officer R. Frasch was on the first floor in Unit (3) E-Block. There was an inmate smoking in the non-smoking phone area. Frasch never said anything to him, and again at 3:45 p.m. on 10/19/00 Frasch was in the same area on the first floor non-smoking area, when an inmate came down smoking. He was standing right in from of Frasch smoking, but Frasch never said anything to him. On 10/20/00 at 12:00 and 10/27/00 at 8:00 a.m. inmates were smoking in non-smoking areas and Frasch said nothing.

COUNT I

(Cruel And Unusual Punishment)

23. The Defendants are aware of the harms caused by second hand smoke.

24. The Defendants have taken a deliberate indifference to the serious medical need of Plaintiff, to-wit: to be free from the effects of second hand smoke.

25. Plaintiff has described and has brought the problem to the Defendants' attention. However they simply ignored his complaints.

26. As a proximate result of the cruel and unusual punishment inflicted by the Defendants, Plaintiff was damaged.

COUNT II

27. (Action in mandamus pursuant to 28 U.S.C. § 1361).

28. Defendants are agents of the United States.

29. Federal Bureau of Prisons' policy here at USP Lewisburg purpose as a result of the Surgeon General determination that passive inhalation of environmental tobacco smoke possess a health hazard, it is necessary to limit smoking to certain areas of the institution. Program Statement 1640.03.

30. However, the Defendants refused to comply or enforce the policy. The Defendants have a duty to comply and enforce the policy.

31. All administrative remedies are exhausted.

32. irreparable harm will continue unless the Defendants receive a mandate to comply with the policies of which they have a duty to comply with.

33. Plaintiff request an injunction compelling the Defendants to comply with the non-smoking policy here at USP Lewisburg.

34. Therefore, Plaintiff requests a writ of Mandamus pursuant to 28 U.S.C. § 1361.

Wherefore, Plaintiff Ronald S. Tillman, requests in the amount to be proven at trial compensatory damages, punitive damages, and fees recovery of cost. Plaintiff requests that the Defendants be enjoined from further inflation of cruel and unusual punishment. And be required to properly enforce the smoking policy in line with community standards, and that a writ of mandamus be issued pursuant to 28 U.S.C. § 1361.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on each of the counts.

Respectfully Submitted,

Ronald S. Tillman
Ronald S. Tillman

VERIFICATION

I hereby certify under penalty of perjury that I am the Plaintiff in the above-captioned case; that I have read the foregoing complaint; and, that the facts related therein are true and correct to the best of my knowledge.

Ronald S. Tillman
Ronald S. Tillman